

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

THE TRUSTEES OF PURDUE \*  
UNIVERSITY \* July 11, 2022  
\*  
VS. \*  
\* CIVIL ACTION NO. W-21-CV-727  
STMICROELECTRONICS N.V. \*  
ET AL \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
DISCOVERY HEARING (via Zoom)

APPEARANCES:

For the Plaintiff: Michael W. Shore, Esq.  
Raphael Chabaneix, Esq.  
Mu Lin Hsu, Esq.  
Shore Chan DePumpo LLP  
901 Main Street, Suite 3300  
Dallas, TX 75202

For the Defendant: Justin S. Cohen, Esq.  
Dina W. McKenney, Esq.  
Bruce S. Sostek, Esq.  
Nadia Elena Haghighatian, Esq.  
Thompson & Knight, LLP  
1722 Routh Street, Suite 1500  
Dallas, TX 75201

Massimo Ciccarelli, Esq.  
Ciccarelli Law Firm  
750 N. St. Paul St., Suite 200  
Dallas, TX 75201

Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 340-6114

Proceedings recorded by mechanical stenography,  
transcript produced by computer-aided transcription.

01:44 1 (Hearing begins.)

01:44 2 DEPUTY CLERK: A civil action in Case  
01:44 3 6:21-CV-727, the Trustees of Purdue University versus  
01:44 4 STMicroelectronics NV, et al. Case called for a  
01:44 5 discovery hearing.

01:44 6 THE COURT: Announcements from counsel,  
01:44 7 starting with Mr. Shore.

01:44 8 MR. SHORE: Michael Shore for Purdue  
01:44 9 University. Also with me today are Raphael Chabaneix,  
01:44 10 Halima Shukri Ndai and Chris Hsu from our firm, as well  
01:44 11 as client representative, Kenneth Waite.

01:44 12 THE COURT: Welcome to all of you,  
01:44 13 especially your client representative.

01:44 14 And I see Mr. Ciccarelli.

01:44 15 MR. CICCARELLI: Good afternoon, Your  
01:44 16 Honor. Max Ciccarelli representing STMicroelectronics.  
01:45 17 With me also is Justin Cohen and also our client  
01:45 18 representative, Mr. Andrew Mayo who is in-house counsel  
01:45 19 at ST.

01:45 20 THE COURT: And welcome to all of you and  
01:45 21 your client representative as well.

01:45 22 Give me one second.

01:45 23 I have that -- first I have Purdue seeks  
01:45 24 complete responses to Request for Admission 1 and  
01:45 25 Request for Productions 1, 2, 3, 4 and 5.

01:45 1 I'm happy to hear from Purdue.

01:45 2 Mr. Shore?

01:45 3 MR. SHORE: Sorry. I was on mute.

01:45 4 Okay. So Request for Admission No. -- I  
01:45 5 guess, yeah, we can start for request for admissions.  
01:46 6 They're a little easier, I guess.

01:46 7 Hold on a second. I had prepared to do  
01:46 8 the interrogatories first, so I'm missing some -- I've  
01:46 9 got some pages out of order.

01:46 10 Okay. All right. So Request for  
01:46 11 Admission No. 1 was simply whether or not the products  
01:46 12 are MOSFETs, admit it or deny it. Very simple,  
01:46 13 straightforward.

01:46 14 They call all of these products MOSFETs  
01:46 15 on the data sheets. They call them MOSFETs in the  
01:46 16 marketing material. They call them MOSFETs on their  
01:46 17 website. And we're simply asking them to admit whether  
01:46 18 or not they're MOSFETs. Very simple, straightforward  
01:47 19 request.

01:47 20 THE COURT: In your request do you use  
01:47 21 the word, are all of your products MOSFETs? Or do you  
01:47 22 identify specific products by serial number? Or how  
01:47 23 did you frame the RFA?

01:47 24 MR. SHORE: We actually have it -- we  
01:47 25 refer them to Interrogatory No. 8 which has a list of

01:47 1 product codes which are the actual product numbers.  
01:47 2 And we say admit that each product code listed in  
01:47 3 Interrogatory No. 8 in this document corresponds to a  
01:47 4 product that is or includes a MOSFET.

01:47 5 So they know exactly what we're talking  
01:47 6 about down to product number, by their own product  
01:47 7 number. They won't answer. I mean, this is as  
01:47 8 straightforward as it can possibly be. Is the product  
01:47 9 that you call a MOSFET? Is a product that your data  
01:47 10 sheet calls a MOSFET? Is a product that your marketing  
01:47 11 material calls a MOSFET? Are those products MOSFETs?

01:47 12 THE COURT: Is there an agreement between  
01:47 13 the parties and the experts as to what a MOSFET is?

01:48 14 MR. SHORE: It was an issue in claims  
01:48 15 construction. They asked that the term "MOSFET" be  
01:48 16 limiting in the preamble. The Court said yes to that.  
01:48 17 We haven't got the final detailed opinion yet.

01:48 18 But the question arose when they asked  
01:48 19 that the preamble be limiting. The preamble says a  
01:48 20 silicon carbide MOSFET. That's the preamble.

01:48 21 And so we're simply asking a very  
01:48 22 straightforward question, are these MOSFETs? And we're  
01:48 23 telling them exactly what products we're talking about.

01:48 24 And they -- and the strange thing about  
01:48 25 this, Your Honor, is they already call every one of

01:48 1 these products MOSFETs repeatedly on their website,  
01:48 2 data sheets, marketing materials. So we didn't think  
01:48 3 that this should be any type of hard thing for them to  
01:48 4 answer.

01:48 5 THE COURT: I think you're done. If  
01:48 6 you're not, let me know if you want to say --

01:48 7 MR. SHORE: I am, Your Honor. I'm sorry.

01:48 8 THE COURT: A response?

01:49 9 MR. CICCARELLI: Yes, Your Honor.

01:49 10 So first of all, in terms of claim  
01:49 11 language, the claim language that was at issue during  
01:49 12 claim construction was not the word "MOSFET." It was  
01:49 13 the written out term, "metal oxide semiconductor field  
01:49 14 effect transistor."

01:49 15 That's not what this request is asking  
01:49 16 about. This request is asking about just MOSFET,  
01:49 17 letters M-O-S-F-E-T. They are in another -- they're in  
01:49 18 some different claims.

01:49 19 And because it is a claim term, what we  
01:49 20 told them was that, you know, subject to the  
01:49 21 objections, without making any admissions regarding  
01:49 22 whether the products meet a claim element, ST, Inc.  
01:49 23 admits that the term "MOSFET" has been used in  
01:49 24 conjunction with the products listed in Interrogatory  
01:49 25 No. 8.

01:49 1 In response to Interrogatory No. 8, or in  
01:49 2 one of those rogs, we also pointed them to the  
01:49 3 documents where we use that term so that they can see  
01:49 4 the term in context and determine whether it is the way  
01:49 5 that they're using the term or not.

01:49 6 MR. SHORE: Your Honor, there's only one  
01:49 7 way to use the term. MOSFET is a term of art. It  
01:50 8 means metal oxide semiconductor field effect  
01:50 9 transistor. That's what a MOSFET is.

01:50 10 And so when they say, yes, we use this  
01:50 11 term to refer to our products, but they won't say  
01:50 12 whether their products are the term that they use to  
01:50 13 refer to them, this is pure gamesmanship.

01:50 14 THE COURT: I'll be back in just a  
01:50 15 second.

01:50 16 (Pause in proceedings.)

01:52 17 THE COURT: Mr. Ciccarelli, perhaps you  
01:52 18 can help me here -- if we can go back on the record.

01:52 19 I can't tell whether or not in the case  
01:52 20 there is a dispute on your -- on -- either from you or  
01:52 21 Mr. Shore. He indicates there's not. If there's some  
01:53 22 legal -- I mean, I get that this is a more technical  
01:53 23 term, but at least to me listening to it, it's like if  
01:53 24 he were asking you to say are these circuits? I mean,  
01:53 25 if you're selling circuits and you told the world

01:53 1 you're selling circuits.

01:53 2 On the other hand, if there is a reason  
01:53 3 why there is a legal dispute in the case over whether  
01:53 4 or not these are what he wants you to say are MOSFETs,  
01:53 5 whether they are not, then I'd like to hear that now.

01:53 6 Otherwise I'm not sure why you're  
01:53 7 resisting the request for admission.

01:53 8 MR. CICCARELLI: We call them MOSFETs,  
01:53 9 Your Honor. The data sheets on the very first page  
01:53 10 refer to them as MOSFETs. And we said as much in our  
01:53 11 response, right? We're not going to shy away from  
01:53 12 that. Our website calls them MOSFETs. That's not the  
01:53 13 issue.

01:53 14 The issue is that I think Purdue is  
01:54 15 trying to combine the meaning of that term with the  
01:54 16 meaning of another term and another claim which is  
01:54 17 metal oxide semiconductor field effect transistor,  
01:54 18 spelled out. And there may be a dispute as to what  
01:54 19 that means.

01:54 20 And so because we know that there is a  
01:54 21 potential issue, we wanted to be clear and acknowledge  
01:54 22 that, yet point him to the documents that show how we  
01:54 23 refer to the product. And we also pointed him to the  
01:54 24 technical documents from which he can look at the  
01:54 25 products and decide whether it is a MOSFET or not.

01:54 1 They are MOSFETs. We advertise them as  
01:54 2 such and we're not going to shy away from that.

01:54 3 MR. SHORE: Your Honor, what he's saying  
01:54 4 is if I ask -- I'm in Indianapolis today -- if I ask  
01:54 5 the Indianapolis Colts whether they were members of the  
01:54 6 National Football League because they have NFL on their  
01:54 7 logo and they say, wow, I don't know. I don't know  
01:54 8 what you mean by National Football League.

01:54 9 This is -- we need to know -- we need to  
01:54 10 know if they're going to contend that these are not  
01:54 11 MOSFETs. If they're going to contend they're not  
01:55 12 MOSFETs, that's a whole other avenue discovery. That's  
01:55 13 a whole other avenue of --

01:55 14 We never thought this was an issue. We  
01:55 15 never believed it was at issue. And somehow they're  
01:55 16 saying maybe it's at issue. But we're not sure if it's  
01:55 17 at issue. They need to tell us whether it's at issue.

01:55 18 And if they are going to refuse to admit  
01:55 19 that they're MOSFETs, then obviously then we need to go  
01:55 20 into that.

01:55 21 THE COURT: Anything else,  
01:55 22 Mr. Ciccarelli?

01:55 23 MR. CICCARELLI: Your Honor, we point  
01:55 24 them to documents where we call them MOSFETs. If he's  
01:55 25 using MOSFETs the same way we're using it, then we



01:55 1 don't have an issue.

01:55 2 MR. SHORE: There's only one way to use  
01:55 3 it.

01:55 4 MR. CICCARELLI: And our response says as  
01:55 5 much. So I think we've pointed him to all the right  
01:55 6 information.

01:55 7 THE COURT: Okay. I'll be back in a  
01:55 8 second.

01:56 9 (Pause in proceedings.)

01:57 10 THE COURT: If we can go back on the  
01:57 11 record.

01:57 12 The Court is going to order ST to admit  
01:57 13 or deny Request for Admission No. 1.

01:57 14 Next up is Request for Production No. 1.  
01:57 15 Mr. Shore, if you would explain this one to me.

01:57 16 MR. SHORE: I think Mr. Ciccarelli, in  
01:57 17 correspondence with us, has agreed to fully answer this  
01:57 18 request for production by supplying all of the  
01:57 19 organizational charts for each one of those distinct  
01:57 20 areas, product design, process engineering, program  
01:57 21 management, regulatory affairs, et cetera.

01:57 22 However, you know, it's been 30 days  
01:57 23 since these were first answered. We can't get a date  
01:57 24 out of them to supplement. We can't get a date out of  
01:57 25 them. This is going to be a recurring theme. We get a

01:57 1 lot of promises, we get no -- nothing. We get no  
01:58 2 dates, we get no end point.

01:58 3 So here all I think I we need, unless  
01:58 4 Mr. Cicccarelli is going to, I think, change his  
01:58 5 position that they're not going to fully respond to us  
01:58 6 on this, I just need a date certain. And that date  
01:58 7 certain, I think, should be July 15th. This has been  
01:58 8 hanging out there. We've been conferencing on this for  
01:58 9 a month since we got their responses. And I'm told I'm  
01:58 10 going to get something and I never get it.

01:58 11 THE COURT: Mr. Cicccarelli, do you have a  
01:58 12 date for him?

01:58 13 MR. CICCARELLI: Yeah. So, Your Honor,  
01:58 14 we can produce the claim charts that we offered to  
01:58 15 produce him next week. We offered some specific claim  
01:58 16 charts -- claim charts. Sorry.

01:58 17 MR. SHORE: Organizational.

01:58 18 MR. CICCARELLI: Organizational charts  
01:58 19 that we think provides that kind of information. And  
01:58 20 we can provide them by next week.

01:58 21 And by the way, in terms of Mr. Shore's  
01:58 22 accusations, we never -- he never asked me for a date  
01:58 23 for these. We've been talking about --

01:58 24 THE COURT: I've got it. That all goes  
01:59 25 over my head.

01:59 1 So it looks like we're done with No. 1.

01:59 2 Mr. Shore, Request for Production No. 2?

01:59 3 MR. SHORE: Yes, Your Honor. Request for

01:59 4 Production No. 2 is, we asked that for each of the

01:59 5 following product codes and any other product codes

01:59 6 responsive to Interrogatory No. 2, produce three

01:59 7 physical specimens of the product corresponding.

01:59 8 We -- there are probably here 40 or 50

01:59 9 products that we're asking for exemplars. What we

01:59 10 really want is an exemplar for each die, and to know

01:59 11 which of the products share the die.

01:59 12 And, again, we actually agreed to pay for

01:59 13 them and to pay for the cost of shipping them to us.

01:59 14 We haven't received any timeline when we're going to

01:59 15 get these. Same problem as before. And we also did

02:00 16 not get an agreement that they would produce all of

02:00 17 them.

02:00 18 So what we -- if it's an accused product,

02:00 19 we think that we're entitled to an exemplar. We are

02:00 20 willing to limit that to one exemplar per die.

02:00 21 And to give you a little bit of

02:00 22 background information, Your Honor, these

02:00 23 semiconductors are made on wafers. The wafers are then

02:00 24 sliced into little pieces called die. The die for

02:00 25 different parts can be identical. The only difference

02:00 1 being the packaging, some may go into what's called a  
02:00 2 TO-220 package. Some may go into a TO-247 package.  
02:00 3 Some may be especially numbered for a particular  
02:00 4 customer. But if they all share the same die, they  
02:00 5 will all be identical.

02:00 6 So what we've told them is we don't  
02:00 7 really want one for each and every part. What we want  
02:00 8 is one exemplar die or some -- or three exemplars of  
02:00 9 each die, each unique die, and some identification over  
02:01 10 which parts apply to that die.

02:01 11 And, again, we have asked for dates.  
02:01 12 We've asked for them to produce these things by  
02:01 13 June 13th. We are -- I'm still not sure what  
02:01 14 Mr. Ciccarelli is offering to --

02:01 15 THE COURT: You mean July 13th?

02:01 16 MR. SHORE: I'm sorry. Yes, July 15th,  
02:01 17 actually. And I'm not sure what Mr. Ciccarelli's  
02:01 18 offering to give us. It's very hard to nail it down.

02:01 19 THE COURT: Well, let's find out.

02:01 20 Mr. Ciccarelli?

02:01 21 MR. CICCARELLI: Your Honor, thank you.

02:01 22 Interestingly, Mr. Shore has been asking  
02:01 23 for three exemplars of every single product. I  
02:01 24 suggested to him that instead of every single product,  
02:01 25 that we give him three exemplars that use each of the

02:01 1 die in question.

02:01 2 I have yet, until I heard it from his  
02:01 3 mouth right now from him that he's okay with that  
02:01 4 proposal. So I'm glad that he's finally accepted the  
02:02 5 proposal. And so that should not be an issue.

02:02 6 Now, let me share my screen so I can  
02:02 7 address some of the other issues.

02:02 8 So, Your Honor, one of the issues that  
02:02 9 we've had is the scope of products that are relevant  
02:02 10 and that we should produce information for in this  
02:02 11 litigation.

02:02 12 Purdue accused a small handful of  
02:02 13 products, and what we did initially, and we told that  
02:02 14 to them right away in our responses to their  
02:02 15 interrogatories, we said we're going to produce  
02:02 16 information not just for those accused products but for  
02:02 17 all the other products that use the same die.

02:02 18 And that's what I'm showing here in the  
02:02 19 yellow circle. The red circle are just the products  
02:02 20 that they accused. The yellow circle are the products  
02:02 21 made with the same die as the die that they accused.  
02:02 22 That's what we told them we were responding on.

02:02 23 We have been trying to get parts for  
02:02 24 those, and we've obtained a lot of those. I think we  
02:03 25 may be missing maybe one or two.

02:03 1 But Mr. Shore's not happy with that scope  
02:03 2 of production. He has instead been wanting all silicon  
02:03 3 carbide MOSFETs that ST makes and some other things  
02:03 4 that we'll talk about in a minute.

02:03 5 And so rather than continue with that  
02:03 6 fight, we told him, fine, Mr. Shore. We're going to  
02:03 7 extend the scope of discovery to all silicon carbide  
02:03 8 MOSFETs. And so we're also -- now, that is a larger  
02:03 9 set of products that have not been at play until we  
02:03 10 recently made that proposal to him.

02:03 11 And so we are proposing to go ahead and  
02:03 12 try to obtain three samples for each of the die that  
02:03 13 are used in those products. But that naturally is  
02:03 14 going to take time, because first we have to find out  
02:03 15 the universe of those products, figure out which of  
02:03 16 those products use which die and things of that nature.

02:03 17 But in the meantime we have obtained some  
02:03 18 products that we are ready to give to him next week.

02:04 19 And it covers, I think, all but one -- but I have to  
02:04 20 check -- of the die that he originally accused.

02:04 21 And then we will keep working forward to  
02:04 22 collect products for the other die that are going to  
02:04 23 come into play, given that we have broadened out the  
02:04 24 scope of discovery.

02:04 25 MR. SHORE: Your Honor, this has not

02:04 1 been -- this was not an issue. The Court ruled at the  
02:04 2 last discovery hearing that discovery covered all SiC  
02:04 3 FETs and transistors. That was the Court's ruling.  
02:04 4 This is discovery. This is not confirmation of what we  
02:04 5 already know.

02:04 6 THE COURT: I think he just said he's  
02:04 7 giving all this to you.

02:04 8 MR. SHORE: Well, yes. He did say he's  
02:04 9 giving it all to me and --

02:04 10 THE COURT: So why are you continuing to  
02:04 11 argue?

02:04 12 MR. SHORE: Well, the only reason why I'm  
02:04 13 continuing to argue is he says he's giving us a very,  
02:04 14 very limited amount next week, and we have no idea when  
02:04 15 we're going to get the rest. There's no --

02:04 16 THE COURT: I think what he said is he  
02:04 17 was going to give you everything he has and they're  
02:04 18 going to continue to work in good faith producing them.

02:05 19 But let me find out from Mr. Ciccarelli  
02:05 20 when he thinks production of these -- production of  
02:05 21 these dies or whatever it is you're producing will be  
02:05 22 complete.

02:05 23 MR. CICCARELLI: It's hard to tell, Your  
02:05 24 Honor, because what we have to do first is we have to  
02:05 25 figure out all the products and all the die that they

02:05 1 involve. And then we have to go to the various  
02:05 2 different parts of the organization to try to see who  
02:05 3 has parts on hand. Because we don't always have parts  
02:05 4 on hand.

02:05 5 Now, there are distributors that have a  
02:05 6 lot of these parts. And Mr. Shore could get them from  
02:05 7 there if he needs them more quickly.

02:05 8 But, Your Honor, what we've already  
02:05 9 provided to him is that correlation information that he  
02:05 10 was talking about. So for the products that he  
02:05 11 accused, we have told them which products use which die  
02:05 12 so that he has that information already handy. And  
02:05 13 we've also told him which of our documents relate to  
02:05 14 each of those die.

02:06 15 So the question was when can we get  
02:06 16 those? I can't tell you right now, Your Honor. All I  
02:06 17 can tell you is I can work as quickly as I can to get  
02:06 18 them. And if that's not fast enough for Mr. Shore, he  
02:06 19 can get them from our distributors.

02:06 20 MR. SHORE: Your Honor, that's not true.  
02:06 21 We've tried to get them from distributors and the  
02:06 22 distributors say they're on back order and we can't get  
02:06 23 them.

02:06 24 And the other thing is there's 35 parts,  
02:06 25 which we'll get this when we get into the



02:06 1 interrogatories, there's 35 accused parts that they  
02:06 2 have not provided us any information on what die.

02:06 3 This is not hard for them. All they have  
02:06 4 to do to know what parts to get is go to their website,  
02:06 5 click on SiC MOSFETs and give me every single thing  
02:06 6 related to SiC MOSFETs. And it's on their website.  
02:06 7 The list of products is on their website. So for him  
02:06 8 to say he can't figure out what I'm looking for, that's  
02:06 9 just not true.

02:06 10 THE COURT: Mr. Shore, we're -- he's  
02:06 11 already said he's producing all of these. I don't know  
02:06 12 why you keep going back to that.

02:06 13 MR. SHORE: Well, I keep going back to it  
02:06 14 because we're going to start -- I'm sorry.

02:06 15 THE COURT: No, no, no, no, no. I'm  
02:07 16 trying to be as patient as I can, but you're wasting a  
02:07 17 lot of time talking about stuff that opposing counsel's  
02:07 18 already said. And I don't need to hear it. I mean,  
02:07 19 we're going to get through this stuff and he's  
02:07 20 represented to you he's going to get them as soon as he  
02:07 21 can.

02:07 22 If you get to the point where you feel  
02:07 23 it's prejudiced you in some way, come back to me and I  
02:07 24 will -- we'll -- I'll figure out a way to level the  
02:07 25 playing field.

02:07 1 But he's told you that he's giving you  
02:07 2 what he has. They're working to get you more and that  
02:07 3 if that's not fast enough, there's an alternative way  
02:07 4 to get it. That's the best he can do.

02:07 5 If we get to the point where that begins  
02:07 6 to prejudice you, I'll deal with it then.

02:07 7 I'm going to move on to No. 3. If you  
02:07 8 want to take this up, Mr. Shore.

02:07 9 MR. SHORE: We're asking for all versions  
02:07 10 of the data sheets. They are saying that they're only  
02:07 11 going to give us the versions as they currently exist.  
02:07 12 And we just want the data sheet -- this case goes back,  
02:08 13 you know, the damages period goes back several years.  
02:08 14 And so we're entitled to the data sheets for every  
02:08 15 product that was sold during the damages period.

02:08 16 And what they basically --

02:08 17 THE COURT: I think what you're saying is  
02:08 18 you're entitled -- tell me if I'm wrong. I think what  
02:08 19 you're saying is you're entitled to every version of  
02:08 20 the data sheet.

02:08 21 MR. SHORE: Yes. Yes, sir.

02:08 22 THE COURT: Got it. So -- and I  
02:08 23 understand why you'd want that.

02:08 24 Let me hear from Mr. Ciccarelli as to  
02:08 25 whether or not those exist and whether or not those can

02:08 1 be produced.

02:08 2 MR. CICCARELLI: So, Your Honor, what we  
02:08 3 offered is let us give you the latest version. Each  
02:08 4 one has a revision history that tells you what changes  
02:08 5 have been made. Most changes, most of the time, are  
02:08 6 totally and completely irrelevant to the subject matter  
02:08 7 of this litigation.

02:08 8 What I told him is if you see some  
02:08 9 changes that might be relevant, tell me. We'll get you  
02:08 10 those other versions.

02:08 11 I don't see the point of having to send  
02:08 12 somebody to dig through to get 10, 12, 15 versions for  
02:08 13 each data sheet that make absolutely no difference to  
02:08 14 this case, when he can look at what we're going to  
02:09 15 produce to him and see if there's a revision that might  
02:09 16 be relevant, in which case we'll go get it for him.

02:09 17 MR. SHORE: Your Honor, version control  
02:09 18 just tells you that they made a change on that date.  
02:09 19 We don't know what the change was. And we don't know  
02:09 20 what they said.

02:09 21 So, I mean, I believe that  
02:09 22 Mr. Ciccarelli's clients may be telling him that none  
02:09 23 of the changes are relevant. But unless he has seen  
02:09 24 every version of the data sheet, which I don't think he  
02:09 25 has, he can't tell you that there's nothing relevant.

02:09 1 You have to have the data sheets to see that.

02:09 2 MR. CICCARELLI: What I have done, Your  
02:09 3 Honor, is I've actually looked at a few of those data  
02:09 4 sheets and looked through the version history control.  
02:09 5 And the types of changes that they describe there, to  
02:09 6 me, sound totally irrelevant.

02:09 7 And I welcome Mr. Shore to take a look at  
02:09 8 that. If that's not enough, we can talk about getting  
02:09 9 prior versions. It just doesn't seem like a productive  
02:09 10 use of anybody's time to go digging up all those  
02:09 11 versions.

02:09 12 THE COURT: So if I understood you,  
02:09 13 Mr. Ciccarelli, you have -- you've been through them  
02:10 14 and you don't believe there's anything that would be  
02:10 15 responsive in those prior versions. But if Mr. Shore  
02:10 16 goes through them and identifies something, you're  
02:10 17 happy to get those revisions or --

02:10 18 MR. CICCARELLI: Yes, Your Honor.

02:10 19 THE COURT: -- earlier versions for him.

02:10 20 MR. CICCARELLI: Yes, Your Honor.

02:10 21 MR. SHORE: I don't know -- the revision  
02:10 22 history that I have seen in other documents simply  
02:10 23 tells you the date they were edited. That's all. It  
02:10 24 doesn't tell you what was changed.

02:10 25 So if Mr. Ciccarelli has looked at them,

02:10 1 that means he has them. If he has them, he can produce  
02:10 2 them. So I don't understand how we are supposed to,  
02:10 3 as, you know, a university, are supposed to try to  
02:10 4 figure out what revisions were made by who when, and  
02:10 5 whether or not there's different versions of the data  
02:10 6 sheet and what they say.

02:10 7 Telling me that there's other versions  
02:10 8 and telling me the date when those versions changed  
02:10 9 doesn't tell me what they say.

02:10 10 MR. CICCARELLI: To be clear, I looked at  
02:10 11 the latest version of a handful of them, right? The  
02:10 12 latest version tells me the history. I looked at the  
02:11 13 history, and the changes were not relevant changes.  
02:11 14 But again, if to the extent once you -- once Mr. Shore  
02:11 15 gets them he needs more versions, we'd be more than  
02:11 16 happy to go dig them up at that point.

02:11 17 THE COURT: I'll be back in a second.  
02:11 18 (Pause in proceedings.)

02:12 19 THE COURT: I'm going to deny the motion  
02:12 20 for production at this time without prejudice to  
02:12 21 Mr. Shore, coming back, and if you identify something  
02:12 22 he believes is relevant, asking ST to produce it.

02:13 23 Request for Production No. 4, Mr. Shore,  
02:13 24 I'm happy to take that one up.

02:13 25 MR. SHORE: That one we can skip, Your

02:13 1 Honor. I think that one's been covered.

02:13 2 THE COURT: Then let's move to No. 5.

02:13 3 MR. SHORE: All right. No. 5. This is  
02:13 4 important. I mean, the -- our final infringement  
02:13 5 contentions are due this Friday, which we're going to  
02:13 6 have to ask for an extension on which I'm going to sort  
02:13 7 of preview for the Court. One of the reasons is  
02:13 8 obviously what we've talked about, they haven't even  
02:13 9 produced all of the silicon carbide MOSFET process  
02:13 10 flows. They haven't produced all the silicon -- you  
02:13 11 know, there's no way that we can have final contentions  
02:13 12 for things that we don't have or the things that they  
02:14 13 haven't produced.

02:14 14 But what we have here in No. 5 is most of  
02:14 15 the process flowcharts are pretty void of any useful  
02:14 16 information. They're written in code words that we  
02:14 17 cannot decipher. A control flow plan should be  
02:14 18 produced to identify the devices and routes that  
02:14 19 correspond to each device. The process flows should be  
02:14 20 in English, not Italian, and should include a process  
02:14 21 description what occurs at each stage of the process.

02:14 22 We have an interrogatory which we may or  
02:14 23 may not get to -- hopefully today we'll get to it --  
02:14 24 where we asked them to describe in detail each -- the  
02:14 25 process by which these are made. And they referred us

02:14 1 to these same documents which are in Italian.

02:14 2           There's 42 cases that have addressed the  
02:14 3 issue of whether Rule 33(d) can be used to refer to  
02:14 4 documents that are not in English. You can't. You  
02:14 5 can't do that.

02:14 6           So we either need for every single  
02:14 7 silicon carbide MOSFET process flows with English  
02:15 8 translations, since this is a U.S. court, proceedings  
02:15 9 are in English, you can't refer to us Italian  
02:15 10 documents. But we don't have that. And we don't have  
02:15 11 it even for all of the parts we've accused -- actually  
02:15 12 accused. We don't have it.

02:15 13           So, again, this is pretty basic  
02:15 14 fundamental information.

02:15 15           THE COURT: A response?

02:15 16           MR. CICCARELLI: Sure, Your Honor. I  
02:15 17 think Mr. Shore may be thinking about something  
02:15 18 different. Request for Production No. 5, I have it on  
02:15 19 the screen. It relates to two ST prior art products,  
02:15 20 the PP-26 die and the products that use the EZ-67 die.

02:15 21           And for those we've already told him  
02:15 22 these are products that are more than 20 years old. We  
02:15 23 have produced the process flows that we've been able to  
02:15 24 find for those products and all the other information  
02:15 25 that we have been able to find.

02:15 1 So for these, unfortunately, as we told  
02:15 2 him and as I think our dispute chart sets forth, we  
02:16 3 don't have any of the documents. We're continuing to  
02:16 4 look, but when you have stuff that's 22-plus years old,  
02:16 5 it's hard.

02:16 6 THE COURT: Mr. Ciccarelli, when a lawyer  
02:16 7 says we produced everything we have, I usually turn to  
02:16 8 the other side and ask what they would like me to do.

02:16 9 MR. SHORE: Your Honor, if that's all  
02:16 10 they have, then they can't prove their invalidity case,  
02:16 11 and I guess there's nothing else we can do. Because  
02:16 12 what they've produced definitely does not invalidate  
02:16 13 anything. You can't even understand it. So okay.

02:16 14 THE COURT: Okay. Now I have in front of  
02:16 15 me -- that exhausts the list I have.

02:16 16 But, Mr. Shore, you just mentioned an  
02:16 17 interrogatory. Is that on a -- maybe on a different  
02:16 18 piece of paper. Let me look. Give me one second.

02:16 19 MR. SHORE: Yeah. There's a different  
02:16 20 dispute chart, Your Honor.

02:16 21 THE COURT: Got it. Here we go. It's  
02:17 22 coming up.

02:17 23 Okay. I'll take up Interrogatory No. 1.

02:17 24 MR. SHORE: In Interrogatory No. 1 we're  
02:17 25 asking for all agreements that are related to or



02:17 1 concerning ST supplying of silicon carbide ST power  
02:17 2 parts, MOSFETs.

02:17 3 They have produced only -- they produced  
02:17 4 two internal agreements between ST NV and ST, Inc. from  
02:17 5 the 1980s. They've also produced four distributor  
02:17 6 agreements with four distributors. That's it.

02:17 7 So they haven't produced any purchase  
02:17 8 orders. They haven't produced any master supply  
02:17 9 agreements of customers. There's not a single  
02:17 10 agreement with customers that has been produced.

02:17 11 So, again, we don't know what the terms  
02:18 12 and conditions of sale are. The reason why this is  
02:18 13 important is many times these agreements or purchase  
02:18 14 orders will have a delivery location. And if that's  
02:18 15 the United States, obviously that's important as to who  
02:18 16 was the importer.

02:18 17 You can also have things about where  
02:18 18 payments are to be made. Are they to be made in the  
02:18 19 United States? To or from the United States? There's  
02:18 20 all kinds of things in these agreements that you can  
02:18 21 use to establish a U.S. sale or a nexus to the United  
02:18 22 States.

02:18 23 It also gives terms and conditions for  
02:18 24 the sale and returns and things like that. These are  
02:18 25 very fundamental agreements.

02:18 1 What we asked them for was to give us, by  
02:18 2 a date certain which we don't have, to ask them to give  
02:18 3 us at least one version of every purchase order with  
02:18 4 every customer, every supply agreement where there is a  
02:18 5 supply agreement with any customer. As well as the  
02:18 6 other -- I think the bigger issue is that we also asked  
02:18 7 them for their agreements with Wolfspeed.

02:19 8 Wolfspeed is another defendant on these  
02:19 9 same patents in North Carolina. Wolfspeed has a  
02:19 10 agreement where they have supplied ST. Well, there's  
02:19 11 one press release saying \$800 million supply agreement  
02:19 12 for silicon carbide wafers, substrates. And another  
02:19 13 one says that agreement has been expanded to  
02:19 14 \$1.5 billion.

02:19 15 So those -- obviously those agreements  
02:19 16 are critically important because they tell us how much  
02:19 17 capacity and forecast ST is buying starting material  
02:19 18 for. So if you go to your supplier and you say I need  
02:19 19 \$1.5 billion worth of starting material, that probably  
02:19 20 means that you're going to use \$1.5 billion of starting  
02:19 21 material to create parts that are probably in the five  
02:19 22 to \$7 billion range of sales.

02:19 23 So we think that those agreements -- any  
02:19 24 agreement concerning their supply of silicon carbide  
02:20 25 MOSFETs should be produced. Including agreements with

02:20 1 Cree/Wolfspeed and agreements with their customers.

02:20 2 And I think Mr. Ciccarelli did agree that  
02:20 3 they would provide example purchase orders. He has not  
02:20 4 agreed -- or at least I think he's -- he's either not  
02:20 5 agreed or says he can't find any agreements with  
02:20 6 customers.

02:20 7 No customer supply agreements. Which is  
02:20 8 very weird in this industry, which I'm very familiar  
02:20 9 with. Because no customer is going to use a supplier  
02:20 10 where they don't have certainty of supply over a  
02:20 11 certain period of time. Because you can't have your  
02:20 12 supply chain be not secure as far as supply.

02:20 13 But to me, this is very simple. We want  
02:20 14 at least one exemplar purchase order for every  
02:20 15 customer. We want any contracts between them and  
02:20 16 customers. And we want their supply agreements with  
02:20 17 Cree/Wolfspeed because that's going to tell us a lot  
02:20 18 about what their forecasts are going forward for future  
02:20 19 sales.

02:21 20 THE COURT: Response?

02:21 21 MR. CICCARELLI: Certainly, Your Honor.

02:21 22 So there's two different issues here and  
02:21 23 if I could break them up that way. One is the  
02:21 24 agreements with the customers which is what the request  
02:21 25 is directed to. And then the other is this agreement

02:21 1 with the suppliers which is not covered. And I'll  
02:21 2 address that second.

02:21 3 Talking about our customer agreements,  
02:21 4 again, we already, as he acknowledges, have given him  
02:21 5 already four agreements with our customers, our  
02:21 6 distributor customers, who were for the accused  
02:21 7 products, the largest, if not -- one of, if not the  
02:21 8 largest customers for these products. So we already  
02:21 9 gave him customer agreements for the products that were  
02:21 10 accused.

02:21 11 What I offered to Mr. Shore is we're now  
02:21 12 broadening out the scope of the discovery to all  
02:21 13 silicon carbide MOSFETs. We're going to get him a  
02:21 14 sales report that identifies all those products sold  
02:21 15 during the damages period. We're going to -- and it's  
02:21 16 also going to identify the customers for those  
02:22 17 products.

02:22 18 We're going to get him contracts, if we  
02:22 19 have them, with those customers. And if we don't have  
02:22 20 a contract with a customer, as Mr. Shore and I were  
02:22 21 discussing, we will get him a purchase order so he can  
02:22 22 see what the purchase orders for that customer  
02:22 23 generally look like.

02:22 24 What we -- what I'd asked Mr. Shore was,  
02:22 25 let's put some kind of cap so we're not running around

02:22 1 chasing the insignificant customers. So I offered to  
02:22 2 get him agreements for the top 99.9 percent of the  
02:22 3 revenue -- customers for the top 99.9 percent of the  
02:22 4 revenue.

02:22 5 So we're agreeing to give him those  
02:22 6 contracts if they exist. And if they -- an agreement  
02:22 7 does not exist, then we'll get him the -- a purchase  
02:22 8 order so he can see what those terms and conditions  
02:22 9 look like.

02:22 10 That's where we are on that. And as soon  
02:22 11 as we generate the sales report, we'll know who the  
02:22 12 customers are and we'll start pulling those agreements  
02:22 13 and get them to Mr. Shore.

02:22 14 MR. SHORE: Your Honor, let me again give  
02:23 15 you a little background information. I'm very familiar  
02:23 16 with this industry. This silicon carbide is a  
02:23 17 replacement technology. It is a relatively new  
02:23 18 technology. It is a technology that is in an -- in  
02:23 19 what we would call an adoption phase. And it can take  
02:23 20 two or three years to get a customer to design your  
02:23 21 product into their end product device.

02:23 22 So during that two to three years that  
02:23 23 you may be working with someone to try to get designed  
02:23 24 into a device, you will supply them samples for very  
02:23 25 low quantities of products, probably in the

02:23 1 .1 percent -- these customers would probably be the  
02:23 2 smallest customers you would have because they are  
02:23 3 buying in small quantities as they qualify your  
02:23 4 products.

02:23 5           However, once you get the design win, the  
02:23 6 design win can result in hundreds of millions of  
02:23 7 dollars in sales. For example, if you are providing  
02:24 8 Apple with 100 parts that they're buying as samples to  
02:24 9 analyze whether or not they're going into the next  
02:24 10 iPhone or the next iPad or iMac, that is incredibly  
02:24 11 important information to us. Because we can look and  
02:24 12 see, oh, they're supplying small quantities to Apple.  
02:24 13 They're supplying small quantities to Samsung or IBM or  
02:24 14 whoever it might be.

02:24 15           That is incredibly important information.  
02:24 16 That is critically important information in determining  
02:24 17 how successful their product roll-out is going to be.

02:24 18           It also allows you to go and subpoena  
02:24 19 those customers or to ask in depositions of ST.  
02:24 20 Because generally when you're giving people samples or  
02:24 21 you're supplying them with samples or low quantities,  
02:24 22 you're doing that with the understanding and knowledge  
02:24 23 that this will lead to a significant piece of business.  
02:24 24 Again, very relevant to the future.

02:24 25           I don't understand why, if he's going to

02:24 1 run a sales report, why would you cut it off at the  
02:24 2 smallest customers. There's no reason to.

02:24 3 MR. CICCARELLI: Let me --

02:25 4 MR. SHORE: Hang on. Mr. Ciccarelli, can  
02:25 5 you hang on?

02:25 6 So what we're talking about is a report  
02:25 7 from an ERP system where they simply plug in the part  
02:25 8 numbers and they print out a report of all the  
02:25 9 customers, which he's been promising me for two weeks  
02:25 10 which I've seen nothing.

02:25 11 So every single customer should be  
02:25 12 disclosed, because those small customers can often end  
02:25 13 up being the biggest customers you will ever have.

02:25 14 MR. CICCARELLI: Your Honor, what I  
02:25 15 explained to Mr. Shore is the sales report will have  
02:25 16 all sales and all customers. The issue with the limit  
02:25 17 was to avoid chasing down small agreements or purchase  
02:25 18 orders with small clients. But what I also told  
02:25 19 Mr. Shore, and it's reflected in our dispute chart, is  
02:25 20 once he sees the list of all the customers, if there  
02:25 21 are some customers that fall below that threshold that  
02:25 22 he thinks may be relevant, if he sees an Apple on there  
02:25 23 or whatever, I said, come back to us and we'll go get  
02:25 24 that agreement for you.

02:26 25 So it's a nonissue. The report will have

02:26 1 all customers. We're going to get -- we're going to  
02:26 2 pull all the agreements, hopefully down to some  
02:26 3 threshold. And if after he sees them, he needs the  
02:26 4 ones below the threshold, we're willing to go get those  
02:26 5 as well.

02:26 6 THE COURT: Anything else?

02:26 7 MR. SHORE: Just that discovery closes in  
02:26 8 November, and we're taking depositions in Sicily in  
02:26 9 September. And I'm not sure I'm going to have time to  
02:26 10 come back.

02:26 11 THE COURT: I'll be back in a second.

02:26 12 (Pause in proceedings.)

02:28 13 THE COURT: If we can go back on the  
02:28 14 record.

02:28 15 The Court is not going to grant any  
02:28 16 additional relief at this time under Interrogatory  
02:28 17 No. 1.

02:28 18 Mr. Shore, I'm happy to hear from you  
02:28 19 with respect to Interrogatory No. 2.

02:28 20 MR. SHORE: Your Honor, as a  
02:28 21 clarification, you are going to enforce the agreement  
02:28 22 that he made to produce everything related to silicon  
02:28 23 carbide MOSFETs?

02:28 24 THE COURT: He made the agreement. I  
02:28 25 don't think I'm going to need to. If you find he



02:28 1 doesn't, certainly come back to me and I will get  
02:28 2 involved.

02:28 3 MR. SHORE: Okay. And then the only  
02:28 4 other thing I'd ask is that we get some kind of date by  
02:28 5 which this is going to happen, because again, we've  
02:28 6 been waiting for two weeks and we have final  
02:28 7 infringement contentions and other things coming up.  
02:29 8 But...

02:29 9 Okay. Let's -- moving to Interrogatory  
02:29 10 No. 2, they just didn't answer it. Just flat out  
02:29 11 didn't answer it.

02:29 12 They -- the meaning -- we asked for the  
02:29 13 meaning of the letters, numbers and symbols used in the  
02:29 14 product codes. They just didn't answer it.

02:29 15 The approximate date, day, month and year  
02:29 16 each product became available for distribution or sale  
02:29 17 in the United States. They just didn't answer it.

02:29 18 And matching the data sheets to the  
02:29 19 product numbers. They didn't answer it.

02:29 20 So what they did was they gave us a list  
02:29 21 of products that they -- and of course they limited it  
02:29 22 again to only those that share die. So his agreement  
02:29 23 that they're now going to give us for all SiC MOSFETs,  
02:29 24 I would like to make sure that that is somewhere in the  
02:29 25 record that that agreement was made and will be

02:29 1 enforced.

02:29 2 But the other thing is, we don't -- we  
02:29 3 need to know -- and it's not equally burdensome. When  
02:30 4 you're looking at a part called an SCT 011 H75 G3AG, we  
02:30 5 would like to know what all of those letters and  
02:30 6 numbers mean. That is internal to them. That is their  
02:30 7 information. It is not equally -- equally burdensome  
02:30 8 for us to go and suss out what stuff means.

02:30 9 We'd like to know the first date each one  
02:30 10 of those was sold in the United States. We would also  
02:30 11 like to have a data sheet matched -- you know, the  
02:30 12 numbered data sheet matched to the product or to the  
02:30 13 part.

02:30 14 They just did not answer any of that  
02:30 15 information.

02:30 16 THE COURT: Mr. Ciccarelli?

02:30 17 MR. CICCARELLI: Yes, Your Honor.

02:30 18 So this interrogatory asks for a list of  
02:30 19 products. And the products that we listed were the  
02:30 20 products that, as I discussed earlier, at the time we  
02:30 21 were considering the scope of production -- of  
02:30 22 discovery, as we told Mr. Shore, to be the accused  
02:31 23 products and all products made with those die.

02:31 24 We provided him the list of those  
02:31 25 products. We are now agreeing to go broader and to go

02:31 1 to all silicon carbide MOSFETs.

02:31 2 When Mr. Shore told us he was having  
02:31 3 issues, what we went ahead and provided to him was  
02:31 4 information -- and I'm showing it on the screen --  
02:31 5 showing exactly which products use which die. And then  
02:31 6 for each die we pointed him to the documents that we  
02:31 7 produced to them that describe how that die is made.  
02:31 8 So he has all that information.

02:31 9 The data sheets also tell him exactly  
02:31 10 what that product is. Nevertheless, we have found a  
02:31 11 document that actually tells him what each of those  
02:31 12 characters usually stands for. And it's not always  
02:31 13 consistent, but we found a document that describes  
02:31 14 that. And we will produce that document to him as  
02:31 15 well.

02:31 16 And as soon as we generate this sales  
02:32 17 report according to this new agreement of this broader  
02:32 18 scope, we will supplement of course Interrogatory 2 to  
02:32 19 list all the products.

02:32 20 One area of dispute that I think does  
02:32 21 remain is we are focusing on the products that existed  
02:32 22 and were sold during the damages period. Mr. Shore  
02:32 23 wants that list of products to go all the way back to  
02:32 24 2009.

02:32 25 We don't understand why we have to dig up

02:32 1 that list, so we propose to start and to make it during  
02:32 2 the damages period. That, I think, is really the last  
02:32 3 remaining issue of dispute.

02:32 4 I think that answers the questions, but  
02:32 5 I'll gladly answer any questions the Court may have.

02:32 6 THE COURT: Mr. Shore, anything else?

02:32 7 MR. SHORE: Your Honor, the only issue  
02:32 8 with it is this is an interrogatory. And we still  
02:32 9 don't have a verification. We don't have anything that  
02:32 10 we can put in front of the jury and say this is a sworn  
02:32 11 answer to this interrogatory.

02:32 12 So I don't know what this document is.  
02:32 13 This is the first time I've ever heard that there's a  
02:32 14 document that has some kind of a key to what all these  
02:33 15 symbols mean. First time I've heard it is today.

02:33 16 But this is a very simple,  
02:33 17 straightforward interrogatory. It needs to be answered  
02:33 18 as an interrogatory. And if he wants to refer us to a  
02:33 19 document under 33(d) by Bates number, that's fine. But  
02:33 20 it needs to be in an interrogatory response. And it  
02:33 21 needs to be under oath.

02:33 22 MR. CICCARELLI: I can address that. So  
02:33 23 I believe that our rog did list the products. And we  
02:33 24 will supplement the rog with a list of products as soon  
02:33 25 as we run the sales report so that we know what

02:33 1 products to put in there.

02:33 2 In terms of the verification, Your Honor,  
02:33 3 of course we will verify these before they take  
02:33 4 depositions. Purdue has not been verifying their rog  
02:33 5 responses. I'm sure they will before we start taking  
02:33 6 their depositions.

02:33 7 And given that one of their depositions  
02:33 8 is tomorrow, I assume they're going to give us verified  
02:33 9 rog responses tonight so we can use them with their  
02:33 10 witness. But of course we will. It's just since we're  
02:33 11 going to be supplementing, we didn't think it was smart  
02:33 12 use of our time to do that right now.

02:34 13 THE COURT: I'll be back in a second.

02:34 14 (Pause in proceedings.)

02:35 15 THE COURT: The Court is going to order  
02:35 16 ST to supplement Interrogatory No. 2.

02:35 17 My question to Mr. Ciccarelli is: What  
02:35 18 is a reasonable ETA for you to get that done?

02:35 19 MR. CICCARELLI: I'm -- we have -- I'm  
02:35 20 hoping to get the sales report next week. And so I  
02:35 21 think the first few days of the week after that I  
02:35 22 should be able to give him the list.

02:35 23 THE COURT: Okay. Let's make that the  
02:35 24 date then.

02:35 25 MR. CICCARELLI: Okay. And, Your Honor,

02:35 1 are you deciding or deciding not to decide the issue  
02:35 2 regarding the going back to 2009 as opposed to only  
02:35 3 during the damages period?

02:35 4 THE COURT: I think going back to 2009  
02:35 5 sounds reasonable. So I'm going to order that as well.

02:35 6 Mr. Shore, Interrogatory No. 3?

02:36 7 MR. SHORE: All right. This one, Your  
02:36 8 Honor, is this is the guts of the case. So what  
02:36 9 they've tried to do here is they've tried to tell us  
02:36 10 that if they just give us a bunch of process documents,  
02:36 11 that we can figure out for ourselves the answer to all  
02:36 12 of these interrogatory subparts.

02:36 13 They're the ones who make these parts.  
02:36 14 They're the ones who have engineers who design the  
02:36 15 parts. They're the ones who manufacture the parts.  
02:36 16 They're the ones who do destructive reverse engineering  
02:36 17 and testing of the parts. They're the ones who do  
02:36 18 short loops on each individual aspect of the parts.  
02:36 19 They can answer these questions for each of these  
02:36 20 silicon carbide MOSFETs.

02:36 21 It is -- this is very, very discrete  
02:36 22 clear information. Let me just give you an example.  
02:36 23 The dimension of the MOSFET die, including the  
02:36 24 dimensions of the front surface, the dimensions of the  
02:36 25 rear surface and the thickness, distance between front

02:36 1 and rear surfaces. Any engineer at ST who deals with  
02:37 2 these could sit down and answer that question for each  
02:37 3 one of these MOSFET dies in 30 seconds. It's not hard.

02:37 4 The name of each functionally and  
02:37 5 chemically distinct layer region in the MOSFET and the  
02:37 6 dimensions, material composition, conductivity. Any  
02:37 7 engineer at ST who works with these parts can do this  
02:37 8 in five minutes. Well, five minute for each part.

02:37 9 So the idea that we're asking them what  
02:37 10 are the individual discrete regions, how large are  
02:37 11 they, what are they made of, et cetera, and asking them  
02:37 12 to identify that, that is the case.

02:37 13 And it is not substantially equal burden  
02:37 14 for someone who does not manufacture parts, who does  
02:37 15 not manufacture these parts, who did not design these  
02:37 16 parts, to answer these questions.

02:37 17 I mean, this set of questions under oath  
02:37 18 is going to be the case. This is it. So this is  
02:38 19 critically important, especially if we have  
02:38 20 infringement contentions, you know, coming up due.

02:38 21 You know, like I said, I could pull out  
02:38 22 MOSFETs, super junction MOSFETs, from an old case  
02:38 23 between us and ST, and I could do this, you know, based  
02:38 24 upon those old parts. So the idea that this is equally  
02:38 25 burdensome to them as to us is just unfathomable.

02:38 1 THE COURT: Mr. Ciccarelli?

02:38 2 MR. CICCARELLI: Thank you, Your Honor.

02:38 3 We have a couple of different issues here.

02:38 4 One is -- and I have the interrogatory up  
02:38 5 on the screen -- the number of very different type of  
02:38 6 information that Mr. Shore's seeking, right? If we're  
02:38 7 going to get to the point where we actually have to  
02:38 8 respond to these, I think they're separate  
02:39 9 interrogatories.

02:39 10 But I don't even want to go there because  
02:39 11 some of the information that it seeks is not as  
02:39 12 straightforward as Mr. Shore states. For example, the  
02:39 13 arrangement of the drain in relation to the rear  
02:39 14 surface. Is he talking about horizontally? Is he  
02:39 15 talking about vertically?

02:39 16 The arrangement of each source region  
02:39 17 within the MOSFET die.

02:39 18 THE COURT: Mr. Ciccarelli, can you give  
02:39 19 me just one second?

02:39 20 (Pause in proceedings.)

02:40 21 THE COURT: I'm going to deny any relief  
02:40 22 on Interrogatory No. 3.

02:40 23 Interrogatory No. 4, Mr. Shore, I'm happy  
02:40 24 to hear from you.

02:40 25 Mr. Shore, if you're talking, I can't



02:40 1 hear you.

02:40 2 MR. SHORE: Apologies.

02:40 3 Interrogatory No. 4 is, again, they refer  
02:40 4 us to Rule 33(d) but they don't match any documents by  
02:40 5 Bates number to any specific device. Many of these  
02:40 6 documents, again, are in Italian, and you can't  
02:40 7 reference foreign documents in a Rule 33(d) response.

02:40 8 The correlation information that they say  
02:40 9 they correlated data sheets or correlated process flows  
02:40 10 to parts, we found 35 of the parts that we've already  
02:40 11 accused. 35 where there's no correlation at all.

02:40 12 So again, we have to -- you know,  
02:41 13 especially if the Court is not going to, you know, make  
02:41 14 them answer Interrogatory No. 3, at the very least in  
02:41 15 answering Interrogatory No. 4, if they're going to  
02:41 16 refer us to process flows, GDS files and other  
02:41 17 documents and materials, they have to match them to the  
02:41 18 individual parts by Bates numbers so that we can go  
02:41 19 back and spend hundreds and maybe thousands of hours  
02:41 20 doing what needs to be done for Interrogatory No. 3.

02:41 21 So if you're not going to make them do  
02:41 22 Interrogatory No. 3, the very least, please, Your  
02:41 23 Honor, you have to make them do, is give us the GDS  
02:41 24 files, the process flows, the data sheets, and  
02:41 25 correspond by Bates number to the individual parts.

02:41 1 And to the extent any of those documents are in  
02:41 2 Italian, they have to give us a certified translation  
02:41 3 because we do not speak Italian.

02:41 4 And, you know, it's not equally  
02:41 5 burdensome for us to go through documents in Italian to  
02:42 6 try to figure out what their parts look like.

02:42 7 MR. CICCARELLI: Your Honor, I think I  
02:42 8 can address that. So as I described earlier for each  
02:42 9 product, I didn't even wait to supplement the rog  
02:42 10 responses. I sent Mr. Shore an e-mail with this  
02:42 11 correlation information: For each of the products they  
02:42 12 have accused I went in and provided the die that that  
02:42 13 product uses.

02:42 14 And then for that -- for each of those  
02:42 15 die I gave him the Bates numbers of the process flow  
02:42 16 for the wafer, the process flow for the front end, the  
02:42 17 GDS data, the mask information. I gave him that  
02:42 18 information so that he can do that analysis.

02:42 19 Some of the process -- the process flows  
02:42 20 do have a column that has the description of the  
02:42 21 processes in Italian. And so what I also gave him was  
02:42 22 a list translating those Italian words into English so  
02:42 23 that he didn't even have to go to Google to do it.

02:42 24 So we have given the correlation that he  
02:42 25 was looking for. We gave it to him right away. We

02:42 1 gave him the other information. And we will of course  
02:43 2 add this information to our next supplementation of the  
02:43 3 interrogatories.

02:43 4 And we've done it for the products that  
02:43 5 were accused and we're now going to do it also for all  
02:43 6 the other silicon carbide MOSFETs.

02:43 7 MR. SHORE: Well, that's not accurate.  
02:43 8 They didn't give us for 35 of the products that are  
02:43 9 accused which we listed in our dispute chart. But,  
02:43 10 again, all I can ask, Your Honor, is to give us a fair  
02:43 11 shot.

02:43 12 THE COURT: I'll be back in a few  
02:43 13 seconds.

02:43 14 (Pause in proceedings.)

02:47 15 THE COURT: If we could go back on the  
02:47 16 record.

02:47 17 The Court is going to deny the relief  
02:47 18 sought by plaintiff on supplementing Interrogatory  
02:47 19 No. 4.

02:47 20 We'll turn to Interrogatory No. 5. I'll  
02:47 21 hear from Mr. Shore.

02:47 22 MR. CICCARELLI: You're on mute, Michael.

02:47 23 MR. SHORE: Interrogatory No. 5 is the  
02:47 24 basic financial information that you get in every  
02:47 25 single patent case. They referred us to Rule 33(d),

02:47 1 but they didn't provide a single Bates number. They  
02:47 2 didn't match any documents to any parts. They didn't  
02:48 3 answer.

02:48 4 THE COURT: Mr. Ciccarelli?

02:48 5 MR. CICCARELLI: Yes, Your Honor.

02:48 6 So this is -- we were -- our goal was to  
02:48 7 produce a sales report and then supplement with the  
02:48 8 Bates numbers of the sales report. As we were in the  
02:48 9 process of doing that, we were having discussions with  
02:48 10 Mr. Shore about the scope of the products. It was  
02:48 11 clear that he was not going to be happy with that  
02:48 12 scope, and so we put a halt on that sales report.

02:48 13 The sales report that we're working on  
02:48 14 getting that should be ready next week, we will of  
02:48 15 course supplement the rog to point him to that  
02:48 16 spreadsheet. And that would have the sales  
02:48 17 information, the customer information, number of units,  
02:48 18 revenue and things of that nature.

02:48 19 MR. SHORE: Your Honor, that doesn't even  
02:48 20 come close to answering the interrogatory. So what  
02:48 21 he's saying is they're not going to give us the cost of  
02:48 22 goods sold. They're not going to give the royalty  
02:48 23 burden. They're not going to give us the gross margin.  
02:48 24 They're not going to give the average selling price.  
02:49 25 They're not going to give us the name of the product

02:49 1 corresponding to the product code.

02:49 2 They're not going to do it on a  
02:49 3 product-by-product basis or part-by-part basis.

02:49 4 They're going to give us some sort of a global -- I  
02:49 5 have no idea what the sales report's going to say, but  
02:49 6 it's certainly -- I've never seen a sales report that  
02:49 7 has the royalty burden, the gross margins, the cost of  
02:49 8 goods sold. They're just going to give us a report of  
02:49 9 what they've sold.

02:49 10 THE COURT: Got it.

02:49 11 Mr. Ciccarelli?

02:49 12 MR. CICCARELLI: Yes. Certainly.

02:49 13 So in terms of product-by-product, I've  
02:49 14 told Mr. Shore it will be product-by-product so he has  
02:49 15 that. From that, obviously, he can figure out the  
02:49 16 average selling price.

02:49 17 The cost of goods sold and royalty burden  
02:49 18 are issues that we are working on collecting documents  
02:49 19 on. I've had calls trying to get to the right people.  
02:49 20 And so we will, of course, produce that as soon as  
02:49 21 possible, but the report should give him 95 percent of  
02:49 22 what he's looking for.

02:49 23 And obviously the cost information is  
02:49 24 information that we, ST, want to produce because it  
02:50 25 would help us. So we're incentivized to produce it.

02:50 1 And that's why -- one of the reasons we're looking for  
02:50 2 it.

02:50 3 MR. SHORE: The first I've heard they're  
02:50 4 ever going to produce anything on that was just now.  
02:50 5 First time.

02:50 6 THE COURT: Okay. Well, here's what  
02:50 7 we're going to do: You're going to get whatever you  
02:50 8 get next week. Whatever parts of the interrogatory are  
02:50 9 not sufficiently covered by what you get, contact  
02:50 10 Mr. Ciccarelli. He can either tell you what's  
02:50 11 remaining that will be coming and when. If he can't do  
02:50 12 that to your satisfaction, just let Regan know and  
02:50 13 we'll get back together.

02:50 14 Sounds like this information is coming  
02:50 15 towards you.

02:50 16 Interrogatory No. 6.

02:50 17 MR. SHORE: Interrogatory No. 6 is -- it  
02:50 18 also goes to is kind of the whole royalty burden  
02:50 19 analysis as well. Every one of these cases the expert  
02:50 20 for the defendant gets up and says, well, if we paid  
02:50 21 you 2 percent, we'd go bankrupt because hundreds of  
02:50 22 patents cover these parts.

02:51 23 So we ask this in every case. I've never  
02:51 24 had it -- frankly, I've never had it objected to  
02:51 25 before. But -- that I can recall.

02:51 1 But we're just saying, okay, if you're  
02:51 2 going to claim that you can't pay us a royalty of what  
02:51 3 we're asking for because there's so many other patents  
02:51 4 cover these products, then you need to tell us what  
02:51 5 patents cover the products.

02:51 6 And if you're going to say that no  
02:51 7 patents cover the products or you're not aware of any  
02:51 8 other patents cover the production, that's fine. You  
02:51 9 can say that. But you have to answer the question.

02:51 10 If you contend that there is any other  
02:51 11 patent that covers these products that you could  
02:51 12 potentially be asked to pay royalties on, you got to  
02:51 13 tell us.

02:51 14 THE COURT: Mr. Ciccarelli?

02:51 15 MR. CICCARELLI: Yes, Your Honor. What  
02:51 16 we explained to -- and also put in our rog response to  
02:51 17 Mr. Shore is that ST does not track which of its  
02:51 18 patents covers which of its products. And so currently  
02:51 19 we're not aware of any such patents.

02:52 20 We're obviously trying to explore the  
02:52 21 issue, because to the extent that we want to argue that  
02:52 22 at trial, we understand that we have to provide that  
02:52 23 information. We're just not aware of any patents right  
02:52 24 now that as -- if and when we find them, we will of  
02:52 25 course supplement timely to the interrogatory.

02:52 1 MR. SHORE: Then that's all they got to  
02:52 2 say then is we are currently unaware of any patents --  
02:52 3 other patents that cover our products, period.

02:52 4 THE COURT: Mr. Shore, if you would give  
02:52 5 me a turn, please.

02:52 6 I was literally about to say,  
02:52 7 Mr. Ciccarelli, it sounds to me like what you're saying  
02:52 8 is you are currently unaware. And if you do become  
02:52 9 aware, then you'll supplement, correct?

02:52 10 MR. CICCARELLI: Correct, Your Honor.  
02:52 11 And our rog response says as much.

02:52 12 THE COURT: Okay. Then let's go to  
02:52 13 Interrogatory No. 8.

02:52 14 MR. SHORE: This is sort of the corollary  
02:52 15 to the request for admission that the Court granted.  
02:52 16 And we're saying if you contend that any of the  
02:53 17 following products are not MOSFETs, and we actually  
02:53 18 list the products, then tell us --

02:53 19 THE COURT: Here's what I'm going to do  
02:53 20 on that: My guess is that we don't need to get to that  
02:53 21 yet. Let's see how they respond to the request for  
02:53 22 admission. And then if, depending on how they do that,  
02:53 23 you can see how they supplement the interrogatory.

02:53 24 So I don't know that that's an issue  
02:53 25 that's ripe yet. I understand it, but let's see how



02:53 1 they respond to the RFA.

02:53 2 So let's turn to Rog No. 9.

02:53 3 MR. SHORE: We can drop that one off.

02:53 4 THE COURT: Okay. I think that's all,  
02:53 5 unless I missed something.

02:53 6 MR. SHORE: We did miss something. Back  
02:53 7 in one of the requests for production you never ruled  
02:53 8 on whether or not they had to produce their agreements  
02:53 9 with Cree and Wolfspeed on the starting material, the  
02:53 10 silicon carbide starting material that has been  
02:53 11 supplied to them.

02:53 12 There was a press announcement of an  
02:53 13 \$800 million contract and another one of a \$1.5 billion  
02:54 14 contract. And those should include forecasts. They  
02:54 15 will also have timing of when those products are going  
02:54 16 to be provided, over how many years or quarters.

02:54 17 That information is clearly responsive to  
02:54 18 the interrogatory. It's clearly relevant. There's no  
02:54 19 excuse not to produce it that I can think of.

02:54 20 THE COURT: If I could -- that must have  
02:54 21 gone by me.

02:54 22 Mr. Ciccarelli?

02:54 23 MR. CICCARELLI: Yeah, sorry, Your Honor.  
02:54 24 We never went to that second point. I divided it into  
02:54 25 two areas and then I never brought you back. I

02:54 1 apologize.

02:54 2 So yeah. So one -- earlier we were  
02:54 3 talking about customer agreements. Now Mr. Shore wants  
02:54 4 a supplier agreement.

02:54 5 The interrogatory -- I have it up on the  
02:54 6 screen right now. It asks for things concerning  
02:54 7 semiconductor products that would encompass SiC  
02:54 8 MOSFETs, okay? Silicon carbide MOSFETs. So, for  
02:54 9 example, if we were buying silicon carbide MOSFETs from  
02:55 10 TSMC, a foundry, yes, an agreement with TSMC would be  
02:55 11 relevant.

02:55 12 Here he's talking about a vendor from  
02:55 13 whom we buy bare wafers. There are no MOSFETs on those  
02:55 14 wafers. So it has nothing to do with the products at  
02:55 15 issue here other than, yes, we may take some of those  
02:55 16 wafers and use them to make MOSFETs, about which he's  
02:55 17 going to get all the information.

02:55 18 So it actually falls outside the scope of  
02:55 19 Interrogatory 1 because it is not an agreement for  
02:55 20 semiconductor products that encompass MOSFETs. It's  
02:55 21 that simple.

02:55 22 If he really wants it, he can serve a  
02:55 23 request. But I really don't understand why he wants  
02:55 24 the agreements, since he's going to get all the sales  
02:55 25 information from ST.

02:55 1 MR. SHORE: Your Honor, may I respond?

02:55 2 THE COURT: Sure.

02:55 3 MR. SHORE: I want this agreement because  
02:55 4 he's going to give me past sales information. What  
02:55 5 this will give me is future projected sales. So -- and  
02:56 6 it will tell me exactly when these projected sales are  
02:56 7 supposed to take place.

02:56 8 Because the way a \$1.5 billion supply  
02:56 9 agreement for silicon carbide substrates used in the  
02:56 10 manufacture of silicon carbide MOSFETs, it will have a  
02:56 11 call-off schedule, saying we get so many substrates in  
02:56 12 this quarter, so many in the next quarter.

02:56 13 And that is very valuable information to  
02:56 14 me and to Purdue, because it lets us know what their  
02:56 15 forecast for the future is for sales. So this all goes  
02:56 16 to the future. Their sales report goes to the past.

02:56 17 But you can't make and sell silicon  
02:56 18 carbide MOSFETs unless you have starting material. And  
02:56 19 you have to have the starting material secured years in  
02:56 20 advance so that you don't have any supply chain issues  
02:56 21 when you have a customer who wants to buy.

02:56 22 And I believe, actually, that Wolfspeed  
02:56 23 is not the only one they buy these from. They buy  
02:56 24 6-inch and 8-inch silicon carbide substrates. So it's  
02:57 25 not just the Cree/Wolfspeed. We believe they're also

02:57 1 buying from another source.

02:57 2 So this goes to forecast of future sales  
02:57 3 which is a very important element of damages. It  
02:57 4 clearly concerns their supplying ST power SiC MOSFETs,  
02:57 5 because they can't supply them without the substrates  
02:57 6 to make them.

02:57 7 THE COURT: Mr. Ciccarelli, anything  
02:57 8 else?

02:57 9 MR. CICCARELLI: English is not my first  
02:57 10 language, but I think that falls outside the scope of  
02:57 11 this request, since they're not -- they don't contain  
02:57 12 any MOSFETs. I think it's that simple, Your Honor.

02:57 13 THE COURT: Mr. Shore, any response to  
02:57 14 that?

02:57 15 MR. SHORE: It definitely -- that  
02:57 16 contract concerns the supply of ST power SiC MOSFETs,  
02:57 17 because they cannot supply them without the starting  
02:57 18 material. And it also gives the forecasts for their  
02:57 19 future sales. So --

02:57 20 THE COURT: I don't think I -- I don't  
02:58 21 think I agree with you. Distribution of semiconductor  
02:58 22 products, we've already -- we start going full circle  
02:58 23 here what you got me to have them admit to is that the  
02:58 24 products that they have -- let's see. Give me a  
02:58 25 moment. Back up here.

02:58 1 So, Mr. Ciccarelli, why wouldn't  
02:58 2 Mr. Shore be correct that these agreements have to do  
02:58 3 with concerning the supply of what will ultimately  
02:58 4 become MOSFETs manufactured by ST? Maybe I don't know  
02:58 5 enough about the connection between the agreement you  
02:58 6 have acquiring just this silicon or silicon wafers and  
02:58 7 the relationship between whether or not those are going  
02:58 8 to be manufactured into MOSFETs.

02:58 9 MR. CICCARELLI: So silicon wafers are  
02:59 10 just bare wafers. They don't have any FETs, any  
02:59 11 transistors or anything on them. They're just bare  
02:59 12 wafers. ST then processes those to create what becomes  
02:59 13 a MOSFET. So what we buy from, for example, Cree -- or  
02:59 14 now they're called Wolfspeed, has no MOSFETs.

02:59 15 THE COURT: I get that. But it says --  
02:59 16 but I don't understand why, if you're buying -- if  
02:59 17 you've made arrangements from a company to buy the  
02:59 18 wafers and the wafers are going to be turned into the  
02:59 19 MOSFETs, why wouldn't that be information concerning  
02:59 20 the supply of the MOSFETs?

02:59 21 This is how the MOSFETs are born, is it  
02:59 22 not?

02:59 23 MR. CICCARELLI: Yeah. I guess  
02:59 24 structurally we're looking at it differently. It  
02:59 25 doesn't concern semiconductor products that have

02:59 1 MOSFETs in them, right?

02:59 2 I see how Your Honor is viewing it. I  
02:59 3 guess I'm reading it differently.

02:59 4 THE COURT: Yeah. The way I read it, I  
03:00 5 think it falls within the interrogatory.

03:00 6 Now, if you want to argue about whether  
03:00 7 or not despite that it should still be produced, I'm  
03:00 8 happy to hear an argument along those lines.

03:00 9 MR. CICCARELLI: Certainly, Your Honor.  
03:00 10 So the forecast, et cetera, wafers are used for  
03:00 11 different types of products, right? We -- ST makes  
03:00 12 diodes which Mr. Shore is not interested in talking  
03:00 13 about when it comes to silicon carbide. And we make  
03:00 14 MOSFETs. So those wafers could be used for different  
03:00 15 things.

03:00 16 Also even if those wafers were all being  
03:00 17 used for silicon carbide MOSFETs, the forecast,  
03:00 18 et cetera, is information that he can get from ST in  
03:00 19 other ways. And that he will likely want from ST in  
03:00 20 other ways. If what he's saying is I will take those  
03:00 21 agreements instead of forecast information, then maybe  
03:00 22 we'll give him the agreements. That might be an easier  
03:00 23 way to handle the issue.

03:00 24 It just doesn't seem to be needed  
03:00 25 information. I think he's trying to make sure that

03:00 1 we're actually reporting all of our sales. And I think  
03:01 2 there's other ways to achieve that.

03:01 3 MR. SHORE: Your Honor, may I respond,  
03:01 4 Your Honor?

03:01 5 THE COURT: Yes.

03:01 6 MR. SHORE: This has nothing to do with  
03:01 7 past sales. Nothing. This has to do with future. So  
03:01 8 his sales report is not going to tell me anything.

03:01 9 And by the way, he is just wrong when he  
03:01 10 says that when you look at the agreement you won't be  
03:01 11 able to tell whether or not these silicon carbide --  
03:01 12 silicon carbide base regions are for MOSFETs or diodes.  
03:01 13 That's not true. You can tell. Because they will have  
03:01 14 different properties. They will have different  
03:01 15 parameters. They will have different specifications  
03:01 16 for a MOSFET than they would for a diode.

03:01 17 So we will be able to look at these  
03:01 18 contracts. We'll be able to tell exactly how many  
03:01 19 MOSFETs they're expecting to sell or supply. Let's use  
03:01 20 the word in the interrogatory. We will be able to look  
03:01 21 and see exactly how many MOSFETs that they are looking  
03:01 22 to supply over the course of the next several years.

03:02 23 And that is incredibly important  
03:02 24 information for us. Otherwise how are we supposed to  
03:02 25 get that information? Try to suss it out of thousands

03:02 1 of Italian and other documents and try to figure out  
03:02 2 what it is?

03:02 3 This will tell us. Because you can't  
03:02 4 make it without a substrate. And if you have to have a  
03:02 5 substrate, we know how many you're going to make  
03:02 6 because that's how many you bought.

03:02 7 So this is very straightforward. It's  
03:02 8 linear. It's not -- it doesn't require us to go search  
03:02 9 through some web and tangle of information and put  
03:02 10 things together. This is very linear information.

03:02 11 THE COURT: Mr. Ciccarelli, anything  
03:02 12 else?

03:02 13 MR. CICCARELLI: No, Your Honor.

03:02 14 THE COURT: I'll be back in a second.

03:02 15 (Pause in proceedings.)

03:03 16 THE COURT: If we can go back on the  
03:03 17 record.

03:03 18 The Court is going to deny the request  
03:03 19 for this information related to the acquisition of  
03:03 20 these wafers from a third party.

03:03 21 I'm assuming ST has sufficient  
03:03 22 information with respect to their forecasting for  
03:03 23 production of the relevant MOSFETs going forward. And  
03:03 24 I think you can get the discovery from ST more directly  
03:04 25 that way.



03:04 1 Mr. Shore, I'll start with you. Is there  
03:04 2 anything else we needed to take up?

03:04 3 MR. SHORE: No, Your Honor. I think  
03:04 4 I'm -- I think I'm beat enough.

03:04 5 (Laughter.)

03:04 6 THE COURT: Well, you know, you won --  
03:04 7 you win some, you lose some. You won the only trial  
03:04 8 you've ever had in my court. I mean, that's why I had  
03:04 9 one win in the Federal Circuit and I quit there. So...

03:04 10 MR. SHORE: Well, I'm not going to quit,  
03:04 11 Your Honor. I'm going to --

03:04 12 THE COURT: I understand. My life would  
03:04 13 be much more boring if I didn't have Michael Shore in  
03:04 14 it. So glad that you're in my court as often as you  
03:04 15 are. Obviously I'm glad to have Mr. Ciccarelli as  
03:04 16 well.

03:04 17 I look forward to hopefully seeing you  
03:04 18 guys in person at some point in the near future. Have  
03:04 19 a good afternoon. Take care.

03:04 20 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
3

4 I, Kristie M. Davis, Official Court Reporter for the  
5 United States District Court, Western District of  
6 Texas, do certify that the foregoing is a correct  
7 transcript from the record of proceedings in the  
8 above-entitled matter.

9 I certify that the transcript fees and format comply  
10 with those prescribed by the Court and Judicial  
11 Conference of the United States.

12 Certified to by me this 16th day of July 2022.

13  
14 /s/ Kristie M. Davis  
KRISTIE M. DAVIS  
15 Official Court Reporter  
800 Franklin Avenue  
16 Waco, Texas 76701  
(254) 340-6114  
kmdaviscsr@yahoo.com  
17  
18  
19  
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